

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

DANIEL M. BREWER and)	CIV. 10-5079-JLV
LeETTA BREWER,)	
)	
Plaintiffs,)	ORDER
)	
vs.)	
)	
UNITED STATES OF AMERICA and)	
HEALTH AND HUMAN SERVICES,)	
)	
Defendants.)	

Defendants filed a motion to dismiss plaintiff LeEtta Brewer from the complaint. (Docket 7). Plaintiffs have no objection to a dismissal of LeEtta Brewer from the complaint, but request her claim be dismissed without prejudice. (Docket 10). Failure to exhaust administrative remedies deprives this court of jurisdiction to consider a plaintiff's complaint. See Calico Trailer Manufacturing Co. v. Insurance Company of North America, 155 F.3d 976, 978 (8th Cir. 1998) ("Where relief is available from an administrative agency, the plaintiff is ordinarily required to pursue that avenue of redress before proceeding to the courts; and until that recourse is exhausted, suit is premature and must be dismissed.") (citing Reiter v. Cooper, 507 U.S. 258, 269 (1993)). "Consistent with exhaustion principles . . . the dismissal [should] be without prejudice" Id. Accordingly, it is hereby

ORDERED that defendants' motion (Docket 7) is granted in part and denied in part.

IT IS FURTHER ORDERED that LeEtta Brewer is dismissed without prejudice as a party plaintiff from the complaint. (Docket 1).

Dated January 12, 2011.

BY THE COURT:

/s/ *Jeffrey L. Viken*

JEFFREY L. VIKEN

UNITED STATES DISTRICT JUDGE